

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUTHER WILLIAMS, JR. and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS

*Docket No. 00-239; Submitted on the Record;
Issued April 30, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's claim was timely filed.

On September 4, 1998 appellant, then 42 years old, filed a claim for tuberculosis, hepatitis, cirrhosis, jaundice and enlargement of the liver that he attributed to his employment at the employing establishment as a nursing care assistant. His employment began on September 25, 1977 and ended on April 14, 1978. On his claim form appellant indicated that he first became aware of his disease on February 21, 1978 and that he first realized his disease was caused or aggravated by his employment on September 3, 1998. He stated that, after the denial of a claim that his conditions were connected to his military service, he requested his medical records and realized why his employment was terminated in 1978. Appellant also stated that his delay in filing was because he "did [not] know of the benefit."

By decision dated September 25, 1998, the Office of Workers' Compensation Programs found that appellant's claim was not filed within the three-year time limit set forth in the Federal Employees' Compensation Act. By letter dated September 28, 1998, he requested reconsideration, stating that he filed his claim on September 4, 1998 when he became aware that a claim should have been filed in 1978, and that he received his service-related medical records in 1998. Appellant submitted a copy of the second page of a Department of Veterans Affairs decision dated April 15, 1998, which found that appellant's claim for a liver condition and tuberculosis had been denied on July 17, 1980 and that his February 3, 1998 notice of disagreement was untimely.

In a September 28, 1998 note, appellant requested a hearing before an Office hearing representative. By decision dated March 17, 1999, an Office hearing representative found that appellant had not filed a timely claim for compensation and had not established that his immediate superior had actual knowledge of his injury within 30 days. By letter dated April 1, 1999, appellant requested reconsideration. By decision dated August 11, 1999, the Office found that appellant had not established that his claim was timely filed.

Section 8122(a) of the Act provides that an original claim for compensation must be filed within three years after the injury. Section 8122(b) provides: “In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.”¹

The Board finds that appellant’s claim was not timely filed.

On his claim form appellant indicated that he was aware of his condition on July 3, 1978. This is consistent with the medical records from the employing establishment, which is a hospital where appellant both worked and was diagnosed with tuberculosis and hepatitis as a veteran in February 1978. On his claim form appellant indicated that he first became aware his conditions were related to his employment on September 3, 1998, one day before he filed his claim. The Board finds that appellant, by the exercise of reasonable diligence, should have been aware of the causal relationship between his claimed conditions and federal civilian employment by July 17, 1980.

Appellant initially filed a claim that his liver condition and tuberculosis were related to his military service, which ended on June 17, 1977. Appellant filed a claim that these conditions were related to his military service on April 10, 1978. This claim was rejected on June 15, 1979, and he filed an appeal on July 31, 1979, which was denied on July 17, 1980. At this point in time appellant, by the exercise of reasonable diligence, should have been aware of the causal relationship of his conditions to his employment at the employing establishment’s hospital as a nursing care assistant.² Since the time for filing his claim began to run no later than July 17, 1980, appellant’s claim filed on September 4, 1998 was not timely filed within the three-year limitation set forth in section 8122(a) of the Act.

Appellant’s claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury.³

In the present case, appellant’s last date of work at the employing establishment was April 14, 1978. The evidence in the case record does not establish that appellant’s immediate

¹ 5 U.S.C. § 8122.

² On appeal, appellant contended that he had been defrauded by the employing establishment into filing his 1978 claim with the military and not under the Act. However, he acknowledged that he “told someone who offered to let me file a federal workers’ compensation claim, and somewhere I replied no....” Appellant’s statements are sufficient to establish that by 1980 he should have been aware of a causal relationship of his claimed condition to his federal civilian employment.

³ 5 U.S.C. § 8122(a)(1) states that compensation may not be allowed if a claim is not filed within three years unless “the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death.”

superior had actual knowledge of an alleged employment-related condition within 30 days after that date. Medical reports show that hepatitis was diagnosed by an employing establishment physician on March 23, 1978, but the etiology was listed as undetermined. The report of appellant's admission to the employing establishment's hospital on February 21, 1978 for a positive tuberculosis skin test and to rule out liver disease states that appellant had "no known hepatitis contacts" and "no known contacts with tuberculosis." An April 28, 1978 medical report stated that appellant's jaundice and hepatitis antedated his employment at the employing establishment. None of these reports provide an indication that appellant's immediate superior had actual knowledge of any employment-related condition or knowledge such to put the immediate superior reasonably on notice of an on-the-job injury.

The decisions of the Office of Workers' Compensation Programs dated August 11 and March 17, 1999 and September 25, 1998 are affirmed.

Dated, Washington, DC
April 30, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member